

(Docket Entry No. 14)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

SHERYL CHAFIN,

Plaintiff,

V.

DELAWARE RIVER AND
BAY AUTHORITY,

Defendant.

Civil No. 06-836 (RMB)

OPINION

Appearances:

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BUMB, United States District Judge:

This matter comes before the Court upon a motion for judgment on the pleadings by Defendant Delaware River and Bay Authority ("DRBA" or "Authority"), a bi-state agency created by New Jersey and Delaware to operate crossings between the two

states.

Plaintiff, Sheryl Chafin, filed a complaint against the DRBA alleging state common law claims of breach of contract, breach of covenant of good faith, and fraud in connection with her employment termination. The Authority contends that, as an interstate entity, it is immune from suit under state law. Specifically, the Authority argues that because the enacting agreement between New Jersey and Delaware to wit, the Compact, described more fully below, does not provide for liability under state law the Authority is immune from suit. Chafin responds that the Compact does expressly provide for state law liability. For the reasons discussed below, Defendant's motion will be denied.

This Court is called upon to interpret the interstate Compact between New Jersey and Delaware. The interpretation of an interstate compact that has been consented to by Congress is a federal question. Cuyler v. Adams, 449 U.S. 433, 438 (1981). Accordingly, jurisdiction in this Court is proper under 28 U.S.C. § 1331.

I. Legal Standard

Defendant DRBA moves for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). Rule 12(c) provides:

Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to

delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

The standard for review of a plaintiff's complaint under Rule 12(c) is identical to that under Federal Rule of Civil Procedure 12(b)(6). See Fed. R. Civ. P. 12(h)(2); see also, Turbe v. Gov't of the Virgin Islands, 938 F.2d 427, 428 (3d Cir.1991).

"Dismissal of a complaint pursuant to Rule 12(b)(6) is proper 'only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" Hackensack Riverkeeper, Inc. v. Del. Ostego Corp., 450 F. Supp. 2d 467, 484 (D.N.J. 2006) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)). The allegations contained in the complaint will be accepted as true. Cruz v. Beto, 405 U.S. 319, 322 (1972). Plaintiff will also be "given the benefit of every favorable inference that can be drawn from those allegations." Schrob v. Catterson, 948 F.2d 1402, 1405 (3d Cir. 1991). However, the plaintiff must make factual allegations and cannot rely on "conclusory recitations of law." Pennsylvania ex rel. Zimmerman v. Pepsico, Inc., 836 F.2d 173, 179 (3d Cir. 1988).

The parties have submitted several attachments to their pleadings and submissions. When a court considers matters

outside the pleadings it should convert the motion to a motion for summary judgment to provide the opposing party an opportunity to respond. Cortec Indus., Inc. v. Sum Holding L.P., 949 F.2d 42, 47 (2d Cir. 1991). However, a court "may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document." Pension Benefit Guar. Corp. v. White Consol. Indus., 998 F.2d 1192, 1196 (3d Cir. 1993). "When a complaint relies on a document . . . the plaintiff obviously is on notice of the contents of the document, and the need for a chance to refute evidence is greatly diminished." Id. at 1196-1197 (citing Cortec, 949 F.2d at 48).

Accordingly, this Court's consideration of the Authority's Compact will not change the applicable standard of review.

II. Analysis

A. The Compact

Defendant, Delaware River and Bay Authority, is a product of a Congressionally approved compact between the states of New Jersey and Delaware. The Delaware-New Jersey Compact ("Compact"), and thus the DRBA, was created when Congress granted its approval to the agreement previously enacted into legislation

by both New Jersey and Delaware.¹ See Pub. L. No. 87-678, 76 Stat. 560; N.J. Stat. Ann. § 32:11E-1 (1990); and Del. Code Ann. tit. 17, § 1701 (2006). There are two principal consequences of the Compact: through the Compact both New Jersey and Delaware surrendered a degree of sovereignty over their territory that is within the DRBA's purview; concomitant with that surrender of sovereignty, the Compact grants the Authority enumerated powers and obligations over the common border.

The Compact, which the New Jersey Legislature has codified at N.J. Stat. Ann. § 32:11E-1, and which the Delaware Legislature has codified in identical form at Del. Code Ann. tit. 17, § 1701, contains twenty-two Articles that govern the DRBA in its operations.

Article IV describes the DRBA as "a body politic . . . which shall constitute an agency of government of the State of Delaware and the State of New Jersey." Under Article V the Authority is governed by a commission of twelve commissioners. The general

¹ The approval of Congress is mandated by what has been referred to as the Compact Clause of the Constitution, though the clause addresses much more than just compacts between the states. In its entirety, that clause reads:

No State shall, without the consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

U.S. Const., art. 1, § 10, cl. 3.

powers of the Authority are set forth in Article VII. Article VIII provides three means for expanding the Authority's powers and obligations. The other Compact provision of relevance in this matter is Article XV, which provides for jurisdiction in the state courts of Delaware and New Jersey "to review any bylaw, rule, regulation, order or other action of the authority"

B. Factual Background

Plaintiff Sheryl Chafin began her employment for the Authority approximately twenty-five years ago. Over the course of her employment Chafin was elevated from secretary to Director of Education and Training. In this, her last position with the Authority, Chafin was responsible for management of the training and educational programs for the Authority's five-hundred plus employees. As Director, Chafin initially reported to the Authority's Chief Operating Officer, Jeff Lewis. The management structure was altered and Chafin was to account to the Authority's Chief Financial Officer, Brad Hopkins. This too was changed and at the time of her dismissal Chafin reported to the Human Resources Officer, Trudy Spence-Parker. Until the series of events that led to her dismissal Chafin had never been the subject of any disciplinary action.

It appears that Chafin and her newest supervisor, Spence-Parker, had several disagreements over policies and procedures. Most relevant is Spence-Parker's criticism of Chafin's policies

on educational benefits. The Authority operated an Educational Assistance Program ("EAP") that gave employees an annual benefit of up to \$5,250 for educational costs. This ceiling on educational benefits allegedly derives from the Internal Revenue Code which requires income tax to be paid on any benefit beyond \$5,250. The Authority discovered, through Spence-Parker, that Chafin had allowed Authority employees, including herself, to exceed the maximum benefit of \$5,250.

Chafin alleges that when these facts came to light a number of promises were either made or implied. Chafin relates that at first, the Authority informed her she would be demoted. Later, the Authority offered Chafin an early retirement plan; Chafin decided to accept this rather than be demoted. Subsequently, Spence-Parker told Chafin that she would not be held accountable for the breach in policy. Specifically, Chafin alleges, "Spence-Parker stated that she had done due diligence and realized that [Chafin] was not in control of the situation and was not responsible, as the current policies and procedures needed to be corrected and revised." (Chafin Compl. at ¶ 17). In reliance on this information, Chafin decided not to retire. However, in February 2004, the education benefits violations were raised again. Chafin protested that benefits in excess of \$5,250 had been approved by Authority management in the past.

Nonetheless, the Authority dismissed Chafin later that

month. The grounds for dismissal included: violation of rules and regulations; neglect or failure to perform duties; and dishonesty in any form. This latter charge was added on an allegation that Chafin altered the Authority's EAP records.

Chafin requested a review of her termination. The Authority convened a hearing before the Authority's Personnel Committee and that body concluded that Chafin was dismissed for "good and sufficient cause." Chafin appealed that decision to the Personnel Committee of the Authority's Board of Commissioners, which affirmed the dismissal. Chafin then brought suit in state court. The Authority removed the suit to this Court and moved for judgment on the pleadings.

III. DRBA's Motion

The Authority moves for judgment on the pleadings arguing that Plaintiff cannot bring the contract claims she alleges in her Complaint. The Authority argues that as a bi-state agency created by interstate compact it cannot be held liable under the law of one of its member states unless the Compact expressly authorizes such application. The Authority notes that all of its powers and duties are set forth in the Compact, and argues that the Compact is silent on whether State law applies to its employment decisions. Therefore, the Authority argues, since the Compact does not expressly provide for the application of state

law to the Authority's employment decisions, Chafin cannot bring a claim under the common law of New Jersey.

The Third Circuit recently addressed the application of state law to interstate entities in International Union of Operating Engineers, Local 542 v. Delaware River Joint Toll Bridge Commission, 311 F.3d 273 (3d Cir. 2002) ("Local 542"), which the Authority contends controls this case. There, plaintiffs, an employees' union, invoked the statutory law of both Pennsylvania and New Jersey to compel the Delaware River Joint Toll Bridge Commission (the "Commission"), an interstate commission of those states, to recognize the union as the representative of the Commission's employees. Id. at 274-75. The district court dismissed the suit and the Third Circuit affirmed. Id. at 275, 281. The Third Circuit noted that, regardless of the similar legislation enacted by each state, the compact that created the Commission did not provide for amendment simply "by each state's passing similar legislation." Id. at 280. Further, the court found that principles of federalism and state sovereignty require an express intention to amend an interstate compact. Id. at 281. "A bi-state entity, created by compact, is 'not subject to the unilateral control of any one of the States that compose the federal system.'" Id. (quoting Hess v. Port Auth. Trans Hudson Corp., 513 U.S. 30, 42 (1994)).

Contrary to the Authority's position that Local 542 is

squarely on point, this Court finds that three important distinctions exist between Local 542 and the instant case. In Local 542 the compact was silent on the application of state law, id. at 280; here, Article XV expressly provides for the application of state law. Second, in Local 542 the compact did not contain any provision for amendment, id. at 279; here, there is such a provision contained in Article VIII. Finally, in Local 542 the issue was whether the subsequent state legislation amended the compact, id. at 280; here, plaintiff seeks to apply the common law.

The paramount distinction is the Compact's Article XV which provides for the application of state law to the Authority and permits judicial proceedings to review any action of the Authority. Article XV reads, in part:

ARTICLE XV. Review and Enforcement of Rules

Judicial proceedings to review any bylaw, rule, regulation, order or other action of the authority or to determine the meaning or effect thereof, may be brought in such court of each state, and pursuant to such law or rules thereof, as a similar proceeding with respect to any agency of such state

By its plain meaning Article XV grants the state courts of New Jersey and Delaware jurisdiction to hear challenges to "action of the authority." Int'l Union of Operating Eng's, Local 68 v. Del. River and Bay Auth., 147 N.J. 433, 442, 688 A.2d 569 (1997) ("Local 68"). Further, by its plain meaning, these challenges may be brought in either New Jersey or Delaware and

"pursuant to such law or rule" of such court. See, e.g., Gauntt Constr. Co. v. Del. River and Bay Auth., 241 N.J. Super 310, 575 A.2d 13 (App. Div. 1990) (applying Article XV and New Jersey choice-of-law rules to contract claims), and Moon v. Delaware River and Bay Authority, No. 05-261, 2006 U.S. Dist. LEXIS 7101 (D. Del. Feb. 24, 2006)(applying Delaware law to breach of covenant of good faith and fair dealing claim).

At oral argument, counsel for the Authority repeatedly claimed that Article XV is merely a "sue and be sued" provision and disputed that Article XV confers any substantive rights. Yet, the DRBA cited no controlling authority for that proposition. DRBA's position is in conflict with the express plain language of Article XV that "[j]udicial proceedings to review any . . . action of the authority . . . may be brought in such court of each state, and pursuant to such law or rules thereof" See, Landreth Timber Co. v. Landreth, 471 U.S. 681, 685 (1985) ("It is axiomatic that [the] starting point in every case involving construction of a statute is the language itself." (internal quotation marks omitted)), Wilson v. U.S. Parole Comm'n, 193 F.3d 195, 198 (3d Cir. 1999) ("A statute, clear and unambiguous on its face, will not be interpreted by a court"), and Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123, 128, 527 A.2d 1368 (1987) ("Where a statute is clear and unambiguous, a court should give the statute its plain

meaning."). Moreover, New Jersey has entered into other compacts which do, in fact, contain "sue and be sued" provisions. Such provisions do not mirror or even simulate Article XV. See, e.g., N.J. Stat. Ann. § 32:3-5(b) and 36 Pa. Stat. Ann. § 3503, Article IV(b) (2006) (stating only power "[t]o sue and be sued" in an agreement between New Jersey and Pennsylvania to create the Delaware River and Port Authority), and N.J. Stat. Ann. § 32:8-3(b) and 36 Pa. Stat. Ann. § 3401, Article II(b) (2006) (stating only power "[t]o sue and be sued" in an agreement between New Jersey and Pennsylvania to create the Delaware River Joint Toll Bridge Commission).

Finally, Article XV states that proceedings can be brought against the DRBA "as a similar proceeding with respect to any agency of such state" This provision permits Chafin's contract claims. First, the DRBA "constitute[s] an agency of . . . the State of New Jersey." N.J. Stat. Ann. § 32:11E-1, Article IV. Second, New Jersey, to wit, the DRBA, has "waive[d] its sovereign immunity from liability arising out of an express contract or a contract implied in fact" N.J. Stat. Ann. § 59:13-3. Accordingly, construing the plain meaning of Article XV, because New Jersey permits its agencies, here the DRBA, to be sued on contract claims, Chafin may bring the instant claims against the DRBA.

Additional differences exist between the DRBA's Compact and

the one under review in Local 542 that reinforce the conclusion that Local 542 does not control. Specifically, in Local 542 the compact did not contain any provision for amendment. Here, Article VIII of the Compact provides a mechanism for both increasing the Authority's powers and its duties, and does so in a manner consistent with Local 542's concern with principles of federalism and sovereignty:

Article VIII. Additional Powers

For purposes of effectuating the authorized purposes of the authority, additional powers may be granted to the authority by legislation of either State without the concurrence of the other, and may be exercised within such State, or may be granted to the authority by Congress and exercised by it; but no additional duties or obligations shall be undertaken by the authority under the law of either State or of Congress without authorization by the law of both States.

This Compact article reflects the compromise inherent in interstate compacts, and Local 542's concern with the integrity of sovereignty. Interstate compacts are a unique contract between at least three separate sovereigns. On the definite terms embodied in the Compact, each party - at least two states and Congress - has surrendered a degree of sovereignty and control over a subject within its exclusive purview. The result is an entity confined by those terms. Here, New Jersey and Delaware have surrendered their sovereign right to exclusive control over certain parts of their territory so that the Authority may operate crossings for the betterment of both

states. Congress has, in turn, approved the Compact and has surrendered to a degree its otherwise exclusive control over that interstate conduct. The terms of that surrender of sovereignty cannot be altered without agreement from all the parties. Local 542 holds that the new entity - the Authority - in which the surrendered sovereignty has been reposed cannot be imposed on without imposing on the sovereignty of the other parties. 311 F.3d at 280. That imposition can only be by consent, "expressed in terms too plain to be mistaken." Id. at 276 (quoting Jefferson Branch Bank v. Skelly, 66 U.S. 436, 446 (1861)). Conversely, a party to a compact can unilaterally secede more power to the bi-state entity. But only such power as the sovereign possesses. This is the root of Local 542's concern that "[a] bi-state entity, created by compact, 'is not subject to the unilateral control of any one of the States that compose the federal system.'" 311 F.3d at 281 (quoting Hess, 513 U.S. at 42).

This is exactly the scheme set out in Article VIII. In Local 542 the compact contained no provision for amendment, thus even identical legislation passed by both member states could not be applied to the bi-state entity because that would alter the terms under which each party agreed to surrender a degree of sovereignty. Article VIII's terms, however, expressly permit additional powers unilaterally "by legislation of either State

without the concurrence of the other, and may be exercised within such State"; or additional duties bi-laterally "with[] authorization by the law of both States." Whether complimentary and parallel law in both member states is sufficient authorization under Article VIII is unclear. Local 542 suggests that such legislation would be insufficient. To be sure, the Third Circuit, in distinguishing the New Jersey Supreme Court's opinion in Local 68, noted that the DRBA's "compact did not clearly authorize modification through legislation 'concurred in' by both states" 311 F.3d at 279. Article VIII's plain language speaks of authorizing legislation, not concurrent legislation. To authorize is a more express approval than to concur. Nonetheless, this provision differs from the compact in Local 542 that did not provide for amendment at all. Id. at 279. Accordingly, while Article VIII's terms demonstrate that Local 542 does not control this case, the principles and reasoning of Local 542 guide this Court's resolution of the ultimate question. A resolution that this Court finds is consistent with Local 542.

The final distinction between the instant case and Local 542 is the nature of the claims brought. Namely, in Local 542 plaintiffs sought to hold the Commission to a statutory duty enacted subsequent to the bi-state commission's creation. Here, Chafin asserts that the Authority had a contractual obligation as defined by the common law. In section f of the Compact's Article

VII, the Authority is empowered to enter into contracts with individuals. N.J. Stat. Ann. § 32:11E-1. It would be a perverse rule of law if the authority was empowered to enter into contracts without being held accountable under the law of contracts. Here, Chafin alleges the Authority, through its agents, made and breached an oral contract on which she relied to her detriment. It would stand to reason that the Authority may be called to answer for that alleged breach.

IV. Conclusion

For the foregoing reasons, Defendant's motion is denied. An appropriate Order will issue this date.

s/Renée Marie Bumb
RENÉE MARIE BUMB
United States District Judge

Dated: December 20, 2006